LEGISLATIVE RESEARCH COMMISSION

VOTING MACHINES STANDARDIZATION

REPORT TO THE 1987 GENERAL ASSEMBLY OF NORTH CAROLINA

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
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December 12, 1986

TO THE MEMBERS OF THE 1987 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1987 General Assembly on the matter of Voting Machine Standardization. The report is made pursuant to Chapter 1032 of the 1985 Session Laws (1986 Session).

This report was prepared by the Legislative Research Commission's Committee on Voting Machine Standardization and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,

Liston B. Ramsey

J. J. (Monk) Harrington

Cochairmen
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

Senator J. J. Harrington, Cochairman
Senator Henson P. Barnes
Senator A. D. Guy
Senator Ollie Harris
Senator Lura Tally
Senator Robert D. Warren

Representative Liston B. Ramsey, Cochairman
Representative Christopher S. Barker, Jr.
Representative John T. Church
Representative Bruce Ethridge
Representative Aaron Fussell
Representative Barney Paul Woodard

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PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Amng the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" G.S. 120-30.17(1).

At the direction of the 1985 General Assembly, in both 1985 and 1986 sessions, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The co-chairmen of the Legislative Research Commission, under the authority of General Statute 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairmen, one from each house of the General Assembly, were designated for each committee.

The study of voting machine standardization was authorized under Section 1 of Chapter 1032 of the 1985 Session Laws (1986 Session). That act states that the Commission may consider House Bill 1664 in determining the nature, scope and aspects of the study. Section 1 of House Bill 1664 reads: "The Legislative Research Commission is authorized to study the issue of a uniform system of voting machines." Chapter 1032 and House Bill 1664 are included in Appendix A.

The Legislative Research Commission grouped this study in its State Government Operations area under the direction of Representative Chris S. Barker Jr. The Committee was chaired by Senator Helen Rhyne Marvin and Representative Charles M. Beall. The full membership of the Committee is listed in Appendix B of this report.

COMMITTEE PROCEEDINGS

The Committee held three meetings.

First Meeting -- October 23, 1986

At its first meeting, the Committee heard from Representative Stephen W. Wood, the sponsor of House Bill 1664, about some of the ideas he had in mind. (See Appendix D.) Rep. Wood said he was concerned that the diversity of voting systems in the State may work inequities. He said he was concerned about cross-over voting by voters who designate a straight party ticket, a problem treated in the U.S. District Court case of Hendon v. State Board of Elections.

James M. Wallace Jr., Assistant Attorney General, was asked to make a presentation at the meeting explaining the impact on voting systems of Hendon and other cases. (See Appendix C-2.) But Mr. Wallace, citing the press of litigation, did not respond or attend.

Alex K. Brock, State Director of Elections, was asked to make a presentation explaining the kinds of voting systems used in North Carolina and giving his opinion of the feasibility of a uniform system of voting machines. (See Appendix C-1.) Mr. Brock talked about the voting systems. (See Appendix D). He discussed the costs and problems associated with the various systems, but did not directly endorse or oppose a uniform system.

The Committee asked Mr. Brock to present at the second meeting draft legislation on proposed ballot instructions and other legislation needed to update the statutes on voting systems. The Committee also asked for a cost estimate of instituting a uniform system of voting systems for the State.

Second Meeting -- November 13, 1986

At the second meeting, Mr. Brock did not attend. He cited the press of demands on his office in the wake of the November 4 elections. Mr. Brock did not send draft legislation on ballot instructions. He did, however, suggest to William R. Gilkeson Jr., the Committee Counsel, a rewrite of Article 14 of Chapter 163 of the General Statutes. This bill would put in statute some of the guidelines that the State Board of Elections gives to local governments and local boards of elections. The draft was presented to the Committee. The members approved some changes in the draft, but delayed final approval until Mr. Brock could be present. (See Appendix F.)

The Counsel reported Mr. Brock's estimate that converting the State to a uniform system of voting machines would cost between $12 million and $15 million.

Senator Marvin expressed her desire to get recommendations on

ballot instruction changes from Mr. Brock or Mr. Wallace. She also said an election problem in her district had focussed her concern on the problem of write-ins in multiple-seat races. She said it had been suggested to her that two things receive the General Assembly's consideration: 1.) providing spaces under each name on the ballot for write-in votes, and 2.) a separate ballot for multiple-seat contests.

The Committee asked that Rep. Chris Barker, the Committee's LRC member, request an extension of the December 5 deadline for filing a report. The Committee asked that both Mr. Brock and Mr. Wallace attend the third meeting so that ballot instructions and the write-in problem could be thoroughly discussed.

Third Meeting -- December 9, 1986

At the third meeting, the Committee heard from both Mr. Brock and Mr. Wallace in response to requests for presentations. (The requests are at Appendices D-3 and D-4, and copies of their responses are at Appendices E and F.) After discussion, the Committee voted to make the following recommendations in its final report to the 1987 General Assembly:

1. No adoption of a uniform voting system for the State at this time,

2. An updating of Article 14 of Chapter 163 of the General Statutes,

3. A new system of write-in voting, proposed by Mr. Brock, requiring that write-in candidates file a Petition of Intent if their votes are to be counted. (See Mr. Brock's letter at Appendix E.) Because of the shortness of time, no draft bill was contemplated for this report. The staff was directed, however, to prepare a draft bill for the members of the Committee who will serve in the 1987 General Assembly.

4. A separate ballot or ballots for multi-seat races, suggested by Representative Beall. (See draft bill at Appendix I.)

5. A change in the statutory approach to the split-ticket voting to comply with the federal courts' decisions in Hendon v. State Board of Elections. The Committee endorsed the draft bill already endorsed by the LRC's Committee on Campaign and Election Procedures (see draft bill at Appendix J), but with the proviso that that bill be made consistent with this Committee's recommendations on write-in votes and separate ballots for multi-seat races.

The Committee approved this final report to the 1987 General Assembly.

RECOMMENDATIONS

The Committee makes the following recommendations to the 1987 General Assembly:

1. The Committee does not recommend a Statewide uniform system of voting machines at this time, feeling that the cost is prohibitive. Alex K. Brock, the State Director of Elections, has estimated that establishing a uniform system would cost $12 million to $15 million.

2. The statutory provisions on voting machines should be:

   * updated to encompass optical-scan and computer-based systems as well as lever-type machines, and

   * strengthened to require investigation and approval by a local board of elections before a local governing body may purchase voting equipment. See draft bill at Appendix H.

3. Write-in votes should not be counted for any candidate who has not filed a Petition of Intent with the appropriate board of elections. The petition should contain a minimal number of signatures. The particulars of filing the petition should be patterned after the requirements for an "Unaffiliated Candidate" in G.S. 163-122. Because of the shortness of time, no draft bill is offered in this report, but the Committee directed the Committee Counsel to draft a bill and circulate it among the Committee members who are members of the 1987 General Assembly.

4. Multi-seat races should appear on a separate ballot or ballots from single-seat races. The multi-seat ballot or ballots should have a party circle and instructions that clearly tell the voter the alternative ways to vote a split ticket and the consequences of using either method. See draft bill at Appendix I.

5. The statutes setting out instructions to voters for marking ballots and instructions to election officials for counting ballots should be amended to comply with the federal court order in Hendon v. State Board of Elections. The U.S. District Court ruled in Hendon that whenever a voter designates a straight-party ticket, but then votes for a candidate not of that party, the off-ticket vote must be counted. Current statutes do not comply with the ruling. See draft bill at Appendix J. This Committee endorses this bill on the condition that it be amended to be consistent with this Committee's Recommendations 3 and 4 above. (The draft bill at Appendix J is also the Recommendation of the LRC Committee on Campaign and Election Practices.)

GENERAL ASSEMBLY OF NORTH CAROLINA

1985 SESSION (REGULAR SESSION, 1986)

RATIFIED BILL

CHAPTER 1032
HOUSE BILL 2141

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, AND TO MAKE OTHER AMENDMENTS AFFECTING THE RAILROAD NEGOTIATING COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Studies Authorized. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1985 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

(1) Uniform System of Voting Machines (H.B. 1664 - Wood),

(2) Adolescent Pregnancy and Premature Births (H.B. 2078 - Jeralds),

(3) Low-Level Radioactive Waste Regulation (S.B. 882 - Tally),

(4) Campaign and Election Procedures (S.B. 1002 - Martin, W.)

(5) Veterans Cemetery Study (H.B. 2117 - Lancaster).

Sec. 2. Transportation Matters. The Legislative Research Commission may study the actions proposed in the following portions of Senate Bill 866 of the 1985 General Assembly as introduced by Senator Redman:

Part I
Parts VII through XIII, and
Part XV.

Sec. 3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1987 General Assembly.

Sec. 4. Bills and Resolution References. The listing of the original bill or resolution in Sections 1 through 3 of this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

-----EXTEND COMPLIANCE WITH VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT.

Sec. 4.1. Section 4 of Chapter 4, Session Laws of the Extra Session of 1986 is amended by deleting "October 1, 1986" and substituting "July 1, 1987".

-----RAILROAD NEGOTIATING COMMISSION AMENDMENTS.

Sec. 5. Section 13.4(b) of Chapter 792, Session Laws of 1985 is rewritten to read:

"(b) The cochairmen of the Commission may appoint an executive committee for such purposes as determined by the Commission."

Sec. 6. The first sentence of Section 13.7(4) of Chapter 792, Session Laws of 1985 is repealed.

Sec. 7. Section 13.8 of Chapter 792, Session Laws of 1985 is amended by adding the following at the end:

"The Boards of Directors of the railroads (or the Board of Directors of the railroad, if the two railroads are merged or combined) each should appoint a negotiating committee to conduct negotiations concerning the leases. If such committees are established, the Commission shall designate two or more of its members (other than the Commission members appointed under subdivisions (6) and (7) of Section 13.2 of this act) who may attend the negotiating sessions of each railroad, without a vote; provided that if the two railroads are not merged or combined, no person so designated may attend the negotiating sessions of both railroads."

Sec. 8. Section 13.10 of Chapter 792, Session Laws of 1985 is repealed.

Sec. 9. Section 13.14 of Chapter 792, Session Laws of 1985 is rewritten to read:

"Sec. 13.14. The Commission shall advise the Governor and General Assembly of its opinion as to whether the Governor should vote his proxy to approve any lease negotiated by the Board of Directors of each railroad, or the Board of Directors of a merged or combined railroad, if such lease requires shareholder approval, and shall advise the Council of State whether it should approve the lease under Chapter 124 of the General Statutes."

Sec. 10. Section 13.15 of Chapter 792, Session Laws of 1985 is amended by adding the following immediately before the period at the end: ", and shall recommend the same to the Governor, in the exercise of his executive function of disposing of property. In any vote on whether the stock held by the State should be sold, the members appointed under subdivisions (6) and (7) of Section 13.2 of this act would be invited to attend the meetings in this regard and to offer the Commission advice and opinion, but would not be entitled to vote."

Sec. 11. Article 6A.1 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-30.9H. Decision letters of U. S. Attorney General published in North Carolina Register.--All letters and other documents received by the authorities required by this Article to submit any 'changes affecting voting' from the Attorney General of the United States in which a final decision is made concerning a submitted 'change affecting voting' shall be filed with the Director of the Office of Administrative Hearings. The Director shall publish the letters and other documents in the North Carolina Register."

Sec. 12. G.S. 150B-63(d1) is amended by adding between the words "information" and "relating" the words "required by law to be published in it, and information".

Sec. 12.1. Chapter 792 of the 1985 Session Laws (First Session, 1985) is amended by adding the following to Section 11.7:

"Upon the approval of the Legislative Services Commission, additional expenses of the Study Commission on State Parks and

Recreation Areas shall be paid from funds appropriated to the General Assembly for the 1986-87 fiscal year."

Sec. 12.2. Used Tire and Waste Oil Disposal. The Legislative Research Commission may study problems surrounding the environmentally safe disposal of used tires and waste oil and their possible solutions.

Sec. 13. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 16th day of July, 1986.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

A-1-3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985

H

I

HOUSE BILL 1664

Short Title: LRC Voting Machine Study. (Public)

Sponsors: Representatives Wood; Hege, Justus.

Referred to: Election Laws,

June 13, 1986

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY A UNIFORM SYSTEM OF VOTING MACHINES.

Whereas, a recent federal court case noted that the several types of voting machines used in North Carolina operate in different ways, causing problems in such issues as crossover voting; and

Whereas, providing a uniform system of voting machines would give all North Carolinians the same voting system, thus ending a situation where citizens are treated differently depending on which county they are in, or even within the same county when only some precincts have machines or different machines are used within the county; and

Whereas, a uniform system might have to be funded by the State because of the heavy expense to counties; and

Whereas, new technologies are developing, and a uniform State system might enable the entire State to benefit from these new technologies; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission is authorized to study the issue of a uniform system of voting machines.

Sec. 2. There is appropriated from the General Fund to the Legislative Research Commission for fiscal year 1986-87 the sum of eight thousand dollars ($8,000) to implement this act.

Sec. 3. This act shall become effective July 1, 1986.

Appendix B

MEMBERSHIP LIST

LRC COMMITTEE

on

UNIFORM SYSTEM OF VOTING MACHINES

House Appointments

Charles M. Beall, Cochairman
Rt. 3, Box 322
Clyde, NC 28721
704-627-2423

N. J. Crawford
15 Edgemont Rd.
Asheville, NC 28801
704-252-6972

Milton F. Fitch, Jr.
615 E. Nash St.
Wilson, NC 27893
919-291-6500

Stephen Wood
P. O. Box 5172
High Point NC 27262

Kathleen S. Orringer
Box 1576
New Bern NC 28560

Senate Appointments

Helen R. Marvin, Cochairman
119 Ridge Lane
Gastonia, NC 28054
704-864-2757

William D. Goldston, Jr.
P. O. Box 307
Eden, NC 27288
919-623-4280

James C. Johnson, Jr.
29 Church St., SE
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704-788-3142

Dennis J. Winner
81B Central Ave.
Asheville, NC 28801
704-258-0094

J. William Copeland
407 E. High St.
Murfreesboro, NC 27855

Representative Christopher S. Barker, Jr. - LRC's Member in Charge
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919-633-1333

STAFF

William Gilkeson
Staff Attorney
Legislative Research
LOB, Raleigh, NC 27611
919-733-2578

Carolyn Joslin, Clerk
2219 Legislative Bldg.
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Appendix C

North Carolina General Assembly
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REP. STEVE WOOD
GUILFORD COUNTY
HOME ADDRESS: P.O. BOX 8178
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COMMITTEES
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HOUSING
INSURANCE
LOCAL GOVERNMENT
RULES
SMALL BUSINESS

VOTING MACHINE STUDY COMMISSION

OCTOBER 23, 1986

The integrity of the ballot is a cornerstone of our democracy. The voting process that takes place on election day should not be compromised in any way. An integral part of our social contract is the sanctity of the ballot.

The implications for our democracy are serious if any voter feels his vote does not equally count with all others. Statewide uniform voting methods in North Carolina would be a major step toward insuring specific voter intent prevails, ballot integrity is affirmed by the state, and that election results are not skewed in any way by the current diversity of voting methodologies in our one-hundred counties.

This study commission could take the first steps toward a uniform system of voting machines statewide. Specifically, it should determine if it is in the interests of voters to require all counties to use the same voting methodologies, the projected costs involved, a timetable for implementation, and how the costs for such implementation should be funded.

WINSTON-SALEM JOURNAL

WEDNESDAY, APRIL 23, 1986

Crossover Voting

Crossover voting is a nuisance for ballot counters, but a convenience for voters. In the interest of fair elections, the issue must be resolved in the voters' favor.

Judge David Sentelle did so in the federal court decision he handed down in Asheville last week. He overturned as unconstitutional the North Carolina law that gives precedence to a straight party vote when the voter also marks specific candidates for the other party. Beginning with the fall general election, he ordered that crossover votes be counted.

That would put North Carolina in line with the other 49 states. Prevailing practice may not in itself be grounds for change, but it certainly is a powerful argument in its behalf. There's no obvious reason voters in this state should be subject to restrictions not imposed elsewhere in the nation.

The crux of the matter is that not all of them are. Crossover votes can be counted in some counties by correctly manipulating levers of voting machines. They are thrown out in counties where paper ballots are still in use. The real thrust of Judge Sentelle's ruling, then, is in the direction of uniformity. Treating all voters alike in the way ballots are counted is a principle that should be supported by Democrats and Republicans alike.

The background of the issue is charged with partisan politics. As the dominant party, Democrats promoted the sanctity of the straight party vote. "From the courthouse to the White House," once was the rallying cry for the faithful. The theme has been muted in recent campaigns as national and state party identities diverged, and ticket splitting became a habit for many voters. Still, Democrats in control of the legislature molded election laws to make it harder for voters to break party ranks and have their votes counted.

The present case rose specifically out of the 1982 election in the 11th congressional district. Republican William M. Hendon claimed he lost because crossover votes weren't counted. Two years later, the General Assembly modified the law but still disallowed crossover votes. The state Republican party took the matter to federal court, leading to the decision last week.

The voter has the option, of course, to mark every race on the ballot rather than a straight ticket with a few crossover exceptions. Judge Sentelle said that was too great an inconvenience to impose on the voter "when the vote can be counted with ease and assurance of voter intent as a crossover vote."

Specific intent is easy to discern when the race is one on one. What about multiple seats, such as county commissioners? If a straight Democratic ticket is marked, then one Republican candidate marked in a three man race, which of the two Democrats should be counted? The answer isn't clear from reports on the court's decision. It does indicate the need for voters to follow instructions in voting. That is an inconvenience every serious voter should be willing to put up with.

Uniformity in voting methods would help assure a fair count of ballots. A first step for the legislature is to require all counties to use the same kind of voting machines. The cost involved would be an investment both for the convenience of voters, and speed and accuracy in counting ballots.

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October 9, 1986

Mr. Alex K. Brock
State Director of Elections
5 West Hargett Street
Raleigh, North Carolina 27601

Dear Mr. Brock,

Representative Charles Beall and Senator Helen Rhyne Marvin, the co-chairmen of the Legislative Research Commission's Study Committee on a Uniform System of Voting Machines, would be honored to have you attend their first meeting Thursday, October 23, 1986. They have asked me to request that you make a presentation at that meeting. The meeting will be held at 9:30 a.m. in Room 1028 of the State Legislative Building in Raleigh.

The study was authorized by the 1985 General Assembly, 1986 Session. The charge is contained in House Bill 1664, copy enclosed.

In your presentation, please describe for the Committee the voting systems used in North Carolina: where they are used, what they can do, how they compare in cost, and what the prospects are for their use in the future. Please discuss the feasibility of a uniform system throughout the State, its likely cost and the share of that cost that the State would likely have to bear.

We look forward to seeing you again and hearing your presentation.

Thank you very much.

Sincerely yours,

William R. Gilkeson Jr.

William R. Gilkeson Jr.
Committee Counsel

cc: Representative Charles Beall
Senator Helen Rhyne Marvin

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October 9, 1986

Mr. James M. Wallace Jr.
Assistant Attorney General
5 West Hargett Street
Raleigh, N.C. 27601

Dear Mr. Wallace,

Representative Charles Beall and Senator Helen Rhyne Marvin, the co-chairmen of the Legislative Research Commission's Study Committee on a Uniform System of Voting Machines, would be honored to have you attend their first meeting October 23. They have asked me to request that you make a presentation. The meeting will be at 9:30 a.m. in Room 1028 of the State Legislative Building.

The study was authorized by the 1985 General Assembly, 1986 Session. The Committee's charge is contained in House Bill 1664, copy enclosed.

In your presentation please tell the Committee about the lawsuit of Hendon v. State Board of Elections:

* a brief history of the case,
* what the court has directed the State to do with regard to voting machines and ballots,
* what the status of the case is and the likelihood of reversal on issues relevant to our study,
* what the case tells us about the future of voting machines in the State.

Please also make the Committee aware of any other legal precedents it should know about as it deliberates about a uniform system of voting machines.

We look forward to seeing you again and hearing your presentation. Thank you very much.

Sincerely yours,

William R. Gilkeson Jr.

William R. Gilkeson Jr.
Committee Counsel

cc: Attorney General Lacy Thornburg
Representative Charles Beall

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

November 17, 1986

The Honorable Alex K. Brock
Director of Elections of North Carolina
5 West Hargett Street
Raleigh, North Carolina 27601

Dear Mr. Brock,

As Co-Chairmen of the Legislative Research Commission's Study Committee on Voting Machine Standardization, we are concerned that the statutes governing the marking of ballots and the counting of ballots appear to be inadequate.

Specifically, it has been brought to our attention that G.S. 163-151 and 163-170 have the following deficiencies:

1). They do not comply with the rulings of the federal courts in Hendon v. State Board of Elections in that they do not permit the counting of crossover votes by a straight-ticket voter,

2). They do not provide for the situation, not addressed in Hendon, of crossover votes on scanner and punchcard ballot in multi-candidate races, and

3). They do not adequately address the marking and counting of write-in votes in multi-candidate races.

We feel that our Committee needs to address these deficiencies, but we need the advice of your department. Time is short. The Legislative Research Commission meets December 12 to consider all final study committee reports to the 1987 General Assembly.

We need your advice on the proper remedies to the three statutory deficiencies listed above. Please present to our committee at its December 9 meeting your proposals for changing G.S. 163-151 and 163-170 and any other statutory changes you believe are necessary or desirable to solve these problems.

The meeting will be at 10 a.m. Tuesday, December 9, in Room 1227 of the State Legislative Building. Please attend or send a representative who can explain your position to our Committee.

Thank you very much.

Sincerely,

Representative Charles M. Beall,
Co-Chair

Senator Helen Rhyne Marvin,
Co-Chair

cc: James M. Wallace Jr., Deputy Attorney General
Alex K. Brock, State Director of Elections
Mrs. Carolyn Joslin
William R. Gilkeson Jr.

Appendix D-4

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

November 17, 1986

The Honorable Lacy H. Thornburg
Attorney General of North Carolina
Justice Building, 2 East Morgan Street
Raleigh, North Carolina 27602

Dear Mr. Attorney General,

As Co-Chairmen of the Legislative Research Commission's Study Committee on Voting Machine Standardization, we are concerned that the statutes governing the marking of ballots and the counting of ballots appear to be inadequate.

Specifically, it has been brought to our attention that G.S. 163-151 and 163-170 have the following deficiencies:

1). They do not comply with the rulings of the federal courts in Hendon v. State Board of Elections in that they do not permit the counting of crossover votes by a straight-ticket voter,

2). They do not provide for the situation, not addressed in Hendon, of crossover votes on scanner and punchcard ballot in multi-candidate races, and

3). They do not adequately address the marking and counting of write-in votes in multi-candidate races.

We feel that our Committee needs to address these deficiencies, but we need the advice of your department. Time is short. The Legislative Research Commission meets December 12 to consider all final study committee reports to the 1987 General Assembly.

We need your advice on the proper remedies to the three statutory deficiencies listed above, in the form of draft legislation that you would be confident defending in court. Please present to our committee at its December 9 meeting drafts of bills rewriting G.S. 163-151 and 163-170 and any other draft legislation you believe is necessary or desirable to solve these problems.

The meeting will be at 10 a.m. Tuesday, December 9, in Room 1227 of the State Legislative Building. Please attend, or send a representative who will be able to explain your proposals.

Thank you very much.

Sincerely,

Charles M. Beall

Representative Charles M. Beall,
Co-Chair

Helen Rhyne Marvin

Senator Helen Rhyne Marvin,
Co-Chair

cc: James M. Wallace Jr., Deputy Attorney General
Alex K. Brock, State Director of Elections
Mrs. Carolyn Joslin
William R. Gilkeson Jr.

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DEC 4 1986
GENERAL RESEARCH DIVISION

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(919) 733-7173

December 3, 1986

Senator Helen Rhyne Marvin, Co-Chair
Honorable Charles M. Beall, Co-Chair
Study Committee on Voting Machine Standardization
State Legislative Building
Raleigh, North Carolina 27611

Dear Senator Marvin and Representative Beall:

In response to your written request of November 17, 1986 I respectfully submit recommended alternatives for your study committee to consider in reference to appropriate amendments to G.S. 163-151 and 163-170. It should be noted that the recommendations contained herein represent the views of the writer and may or may not be concurred in by some members of the State Board of Elections.

Let me present these proposals in the following subdivided matter.

1. Hendon v. State Board of Elections clearly mandated a very simple accomplishment - Program all types of voting machines, tabulators, computer counters, and provide for paper ballots to permit voters, regardless of the above itemized type of voting system he might use in his county, to be able to effect the same voting choices as a voter has always been able to accomplish on an AVM or Shoup mechanical machine. The court specified the AVM as the ideal system to enable a voter to effectively accomplish his preferences. Please keep in mind that Hendon dealt with "cross over" voting after voting a straight party ticket. Therefore, when considering the court ordered rules contained in Hendon we should confine our thoughts and efforts to two main phases of "split ticket" (or cross over) voting such as:

(a) Cross over voting when the voter is voting a ballot (regardless of the type) which contains only single candidate offices.

(b) Cross over voting when the voter is voting a ballot which contains multi-candidate offices.

We have, since the Hendon ruling, been able to appropriately and completely comply with the Court Ruling with reference to (a) above (ballots containing only single candidate offices).

With reference to (b) above the General Assembly has three workable approaches to consider before seriously translating the provisions in the relevant sections of Chapter 163 into legislative amendments.

These considerations are:

(1) Require the "instructions to voter" to state as simply as possible that he must, in multi-candidate contests, indicate his precise choices not to exceed the number for which he is entitled to vote or else his ballot will (i) be counted only for the "cross over" or (j) it will be counted as an over vote and therefore no candidate will receive a vote.

(2) Require that the State and all counties be required to provide a separate ballot containing only multi-candidate contests. (This would require only that a clear "instruction" appear on the ballot and would isolate such contests from those with single candidate contests.

(3) Finally, there is an option that could be considered whereby a "MULTI-CANDIDATE" ballot would be printed with the "straight party circle" eliminated. This approach, while perhaps not immediately popular to either political party, would significantly simplify the probability of 'overvoting'.

2. Write-in votes - It must be pointed out that, given the thousands of contests we have throughout the State, 'write in' vote problems are actually an exception - not the rule. This writer does not view the "write in" problem to be a crisis situation as some have suggested. However, when there is an organized effort there are times when problems can arise even if infrequently.

I believe the rational approach to best address an organized 'write in' effort would be:

(a) Require the would be 'write in' candidate to file a Petiton of Intent with the appropriate county board of elections (or the State Board with respect to state candidates). The candidate should file his "Petition of Intent" on a date certain prior to printing of the ballots in much the same manner as an 'Unaffiliated Candidate" currently is required to do pursuant to G.S. 163-122. It is also my recommendation that such 'write in' candidate should be required to secure a minimal number of signatures on the petition.

(b) By utilizing this approach it would significantly limit the ballot printing responsibilities of all 100 counties to only those in which a "Petition of Intent' had been filed. The savings accomplished would be meaningful.

(c) The General Assembly should, if this approach is adopted, set forth in unequivocal language that a write in vote cast for an individual for whom no 'Petition of Intent' had been filed "shall not be counted, but

rather disregarded". This would greatly reduce the time now given to recording write ins cast for "Mickey Mouse", "Santa Claus", "Popeye", "Lil Abner" and many other perennial aspirants.

The suggestions set forth in this proposal, if acceptable to the committee, can be relatively simply translated into legislation by those more skillful in drafting technique than this writer.

Finally, it is my sincere judgement that any of the proposals put forth in this letter can be efficiently and effectively administered by the State Board of Elections through its 100 county boards of elections.

I will be pleased to discuss these submissions if the distinguished members of the committee so desire.

Respectfully submitted,

Alan K. Brock

Executive Secretary-Director

AKB:jm

cc: Speaker Liston Ramsey

Attachment: Instructions for
1986 General Election Ballots

1. INSTRUCTIONS to go on ballots with only single candidate races:

   a. To vote for all candidates of one party (a straight ticket), make a cross [x] mark in the circle of the party for whose candidates you wish to vote.

   b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross [x] mark in the square opposite the name of each candidate for whom you wish to vote.

   c. You may also vote a split ticket by marking a cross [x] in the party circle and then marking a cross [x] in the square opposite the name of a candidate of a different party.

   d. If you tear or deface or wrongly mark this ballot, return it and get another.

2. INSTRUCTIONS to go on ballots with multi-candidate races:

   a. To vote for all candidates of one party (a straight ticket), make a cross [x] mark in the circle of the party for whose candidates you wish to vote.

   b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross [x] mark in the square opposite the name of each candidate for whom you wish to vote.

   c. You may also vote a split ticket by marking a cross [x] in the party circle and then marking a cross [x] in the square opposite the name of a candidate of a different party.

   d. If you have marked a cross [x] in the party circle for any party and wish to vote for candidates of more than one party in a multi-candidate race, only those candidates whose square you mark with a cross [x] will receive a vote in that race.

   e. If you tear or deface or wrongly mark this ballot, return it and get another.

The above are the "OFFICIAL" Instructions that must appear on all paper ballots (single candidate races or multi-candidate races). They shall appear as shown on paper ballots - counties using voting systems may submit modification of the instructions to this office for approval.

Robert A. Hunter Jr.

Cleon K. Brock

LACY H THORNBURG
ATTORNEY GENERAL

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RECEIVED
DEC 4 1986
GENERAL RESEARCH DIVISION

December 2, 1986

Senator Helen Rhyne Marvin, Co-Chair
Representative Charles M. Beall, Co-Chair
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Dear Senator Marvin and Representative Beall:

This is to advise you that I have now provided the legislative staff with proposed legislation dealing with those matters addressed in your letter of November 17, 1986.

Regarding federal court rulings in Hendon v. State Board of Elections, we have drafted legislation to alter ballot instructions to voters indicating how split tickets may be voted. We have also amended statutes which deal with the method in which votes are counted so that cross-over votes following straight-party votes will be counted. Again, our preferences aside, these drafts are produced in light of the rulings of the U.S. District Court and the Fourth Circuit Court of Appeals in Hendon.

Regarding write-in votes, I believe that our proposals clarify how write-ins in multi-candidate races (and otherwise) are to be cast and counted.

None of our recommendations are inalterable, of course. They are provided to you and the committee to give you initial points of discussion, although you may ultimately choose to leave them unchanged substantively.

Also, pursuant to the request of Senator Marvin, I have prepared a bill which would place all multi-candidate (or multi-seat) races on a separate ballot and eliminate the party circle of such ballots. While our office takes no position on this legislation, I was happy to be of technical service in its drafting.

I expect to be present at your December 9 meeting. Should you have questions before that meeting date, please feel free to contact me.

Sincerely,

James Wallace, Jr.

James Wallace, Jr.
Assistant Attorney General

cc: William Gilkeson
Gerry Cohen

COUNTIES IN NORTH CAROLINA USING VOTING MACHINES & OTHER VOTING DEVICES (78 counties

As of: 10/1/86

Counties using Airmac Technology System (AIRMAC)

ALLEGHANY
ASHE
AVERY
BRUNSWICK
CALDWELL
CAMDEN
CATAWBA
CLEVELAND
CUMBERLAND
EDGECOMBE
FRANKLIN
GASTON
HALIFAX
HARNETT
HAYWOOD
HENDERSON
IREDELL
JOHNSTON
LINCOLN
MOORE
NASH
ORANGE
PITT
RICHMOND
ROBESON
ROCKINGHAM
STOKES
TRANSYLVANIA
UNION
WARREN

30 counties

Counties using Computer Election System (CES)

CABARRUS
CARTERET
COLUMBUS
CURRITUCK
DARE
DAVIDSON
DUPLIN
FORSYTH
GUILFORD
McDOWELL
MITCHELL
ONSLOW
ROWAN
RUTHERFORD
SAMPSON
STANLY
VANCE
WATAUGA
WILKES

19 counties

Counties using Automatic Voting Machines (AVM)

ALAMANCE
BUNCOMBE
CHOWAN
DURHAM
JACKSON
LEE
MARTIN
MECKLENBURG
PERSON
POLK
RANDOLPH
SCOTLAND
SURRY
SWAIN
WAKE
WAYNE

16 counties

Counties using International Election System (IES) (Old Shoup Machine)

BERTIE	(3.2)
CHEROKEE	(3.2)
CRAVEN	(3.2)
HERTFORD	(3.2)
MADISON	(2.5)
NEW HANOVER	(3.2)
NORTHAMPTON	(3.2)
PASQUOTANK	(3.2)
WILSON	(3.2)

9 counties

BLADEN	(10-35)	RF SHOUP	1 county

Counties using CPTECH II (CES)

BURKE
CHATHAM
GRANVILLE
PENDER

4 counties

A BILL TO BE ENTITLED
AN ACT TO REGULATE THE ADOPTION
OF VOTING SYSTEMS BY LOCAL GOVERNMENTS

The General Assembly of North Carolina enacts:

Section 1. Article 14 of Chapter 163 of the General Statutes is rewritten to read:

"Article 14
Voting Systems

163-160. Voting systems; approval; rules and regulations.

The State Board of Elections shall have authority to approve types of voting systems for use in primaries and elections held in this State. The use of voting systems that have been approved by the State Board of Elections in any primary or election held in any county or municipality shall be as valid as the use of paper ballots by the voters.

The State Board of Elections shall prescribe rules and regulations for the adoption, handling, operation, and honest use of voting systems, including, but not limited to, the following:

(1) Types of voting systems approved for use in this State;
(2) Form of ballot labels to be used on voting systems;
(3) Operation and manner of voting on voting systems;
(4) Instruction of precinct officials in the use of voting systems;
(5) Instruction of voters in the use of voting systems;
(6) Assistance to voters using voting systems;
(7) Duties of custodians of voting systems;
(8) Examination of voting systems before use in a primary election; and
(9) Use of paper ballots where voting systems are used as set out in G.S. 163-162.

163-160.1. Definition of 'voting systems.' As used in this Article, 'voting systems' shall mean mechanical voting machines and computer-based and optical-scan election systems.

163-161. Adoption of voting systems by local governments.

(a) Discretionary Authority. -- The board of county commissioners, with the approval of the county board of elections, may adopt and purchase or lease a voting system of a type approved by the State Board of Elections for use in some or all voting places in the county at some or all primaries and elections. Specifically, the board may purchase a voting system upon an installment basis or otherwise, or it may lease a voting system with or without an option to purchase.

The board of county commissioners may decline to adopt and purchase or lease any voting system recommended by the county board of elections, but may not adopt and purchase or lease any voting system that has not been approved by the county board of elections.

(b) Requirements for County Board of Elections. Before approving the adoption and purchase or lease of any voting system by the board of county commissioners, the county board of elections shall:

(1) obtain a current financial statement from the proposed vendor or lessor of the voting system, and send copies of the statement to the county attorney and the chief county financial officer, and

(2) witness a demonstration, in that county or at a site designated by the State Board of Elections, of the voting system by the proposed vendor or lessor, and also witness a demonstration of at least one other type of voting system approved by the State Board of Elections.

(3) test, during a primary or election, the proposed voting system in at least one precinct in the county where the system would be used if adopted."

(c) Implementation of Decision. When the board of county commissioners has decided to adopt and purchase or lease a voting system for voting places under the provisions of subsection (a) of this section, the board of county commissioners shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system in complete working order. If it is impractical to furnish each voting place with the equipment of the approved voting system, that which has been obtained may be placed in voting places chosen by the county board of elections. In that case, the county board of elections shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for each voter.

The county board of elections shall appoint as many voting-system custodians as may be necessary for the proper preparation of the system for each primary and election and for its maintenance, storage and care.

(d) Municipalities. The governing board of a municipality shall have the same authority with respect to the acquisition and use of a voting system for municipal primaries and elections that boards of county commissioners are granted in subsection (a) with respect to other primaries and elections.

The decision of the governing board of the municipality shall be subject to approval of the county board of elections, as described in subsection (a), if the county board of elections administers the elections of the municipality, or by the approval of the municipal board of elections if the municipal board of elections administers the elections of the unit. Before approving

the adoption and purchase or lease of a voting system, the county or municipal board of elections shall be subject to all the requirements of subsection (b), except that in the case of a municipal board of elections, the financial statement shall be sent to the municipal attorney and the chief municipal finance officer, the demonstration shall be conducted in the municipality or at a site designated by the State Board of Elections, and the testing shall be done in a precinct of the municipality.

When a municipal governing body has decided to adopt and purchase a voting system for voting places under the provisions of this subsection, that governing body shall have all the duties parallel to those imposed by subsection (c) on a board of county commissioners and a county board of elections: that is, the municipal governing body shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system or, if that is impractical, provide the available equipment of the approved voting system in the places it chooses, and shall appoint the necessary number of voting-system custodians. In the case that equipment of the approved system for every voting place is impractical, the municipal governing board shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for every voter.

163-162. Use of paper ballots where voting systems are used.

In counties in which voting systems are used in some or all precincts, the county board of elections shall have authority to furnish paper ballots of each kind to precincts using voting systems for use by:

(1) Persons required to sign their ballots under the provisions of G.S. 163-150(e), and

(2) Persons who wish to write in names of candidates who are not on the ballot, if it is not practical to use voting systems to record write-in votes in particular precincts because of the horizontal or vertical printing limitations of G.S. 163-137, provided the county board of elections has issued written approval from the State Board of Elections."

Sec. 2. This act shall become effective on January 1, 1988.

A BILL TO BE ENTITLED
AN ACT TO PROVIDE A SEPARATE BALLOT
FOR MULTI-SEAT RACES

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-140(b)4 is amended on the second line between the term "ballot" and the term "for State officers" by inserting the term "for single-seat contests," and on the third line between the term "court" and the closing parenthesis by inserting the phrase "elected to single seats."

Sec. 2. G.S. 163-140(b)5 is amended on the second line between the term "ballot" and the term "for county officers" by inserting the term "for single-seat contests," and on the fifth line by deleting the term "the" between the term "General Assembly in" and "senatorial and" and substituting the term "single-member."

Sec. 3. G.S. 163-140 is amended by adding a new subsection to read:

(f) Multi-seat races.- Multi-seat races shall be placed on a separate multi-seat ballot or ballots. Beneath the title and general instructions set out in this subsection, the ballot(s) for multi-seat races shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having candidates in multi-seat races and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' Below the party name in each column shall be printed a circle, one-half inch in diameter, and around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each group of offices to be filled. On a single line at the top of each section shall be printed a direction as to the number of candidates for whom a vote shall be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column and the names unaffiliated candidates shall be printed in the appropriate office section of the column headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. You may vote a split ticket in one of two ways:

(i) by making a cross mark opposite the name of each candidate for whom you wish to vote and making no mark in the party circle, or

(ii) by marking the party circle and then marking the square of any candidate of another party for whom you wish to vote. But in a multi-seat race where you have marked a party circle and then you vote for candidate(s) of another party, your vote will not count in that race for any candidate(s) of the party whose [redacted] circle you marked UNLESS YOU MAKE A CROSS MARK OPPOSITE THE NAME OF ONE OR MORE OF THAT PARTY'S CANDIDATES.

c. If you tear or deface or wrongly mark this ballot, return it and get another.'"

Sec. 2. This Act is effective upon ratification.

(Note: The State Director of Elections indicated he would confer with the Attorney General's Office on appropriate ballot instructions consistent with this draft bill.)

A BILL TO BE ENTITLED

AN ACT TO BRING NORTH CAROLINA INTO COMPLIANCE WITH A COURT DECISION CONCERNING STRAIGHT-TICKET VOTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-151(5) is amended by inserting between "shall" and the colon the following: "do so in either of the following ways"

Sec. 2. G.S. 163-151(5)b is rewritten to read:

"b. Mark the party circle of one party and also mark the voting square opposite the name of any candidate or candidates of any other party. The ballot shall be counted as a straight ticket for all candidates of the party whose circle was marked except for a candidate for an office for which the voter has marked the candidate of any other party, in which case the vote marked for any candidate or candidates of any other party shall be counted instead for that office."

Sec. 3. G.S. 163-151(6)d is rewritten to read:

"d. If the voter has marked the party circle of one party, he ~~shall/not~~ may write in the name of a person under the name of a candidate in any other party. In such case, the write-in shall ~~not~~ be counted, ~~but~~ and otherwise the ballot shall be counted for all candidates of the party whose circle was marked except for the office for which there is a write-in."

Sec. 4. G.S. 163-170(5)d.2 is rewritten to read:

2. If the voter has marked the party circle at the top of the column of a political party, and has made a write-in under the name of a candidate printed in a column of a different political party, the write-in shall not be counted, and otherwise the ballot shall be counted as a vote for all candidates of the party in whose circle he has marked except for the office for which there is a write-in.

Sec. 5. G.S. 163-170(6)a is rewritten to read:

"a. If the voter has marked the party circle of one party and also marked the voting square of individual candidates of another party, the ballot shall be counted as a straight ballot and counted as a vote for every candidate for for the party whose circle has been marked ticket for all candidates of the party whose circle was marked except for a candidate for an office for which the voter has marked the candidate of any other party, in which case the vote marked for any candidate or candidates of any other party shall be counted instead for that office."

Sec. 6. G.S. 163-151 is amended by adding the following new subdivision:

"(7) Multi-seat races. If the voter should mark the party circle of one party and also mark the voting square opposite the name of candidates of any other party in a multi-seat race, only those candidates of any party beside whose name the voting square is marked shall receive a vote."

Sec. 7. 163-170(5)d is amended by adding:

"3. In a multi-seat race, if the voter has marked the party circle at the top of the column of a political party and has made a write-in under the name of a candidate printed in a column of a different political party, only the write-in and those other candidates of any party beside whose name the voting square is marked shall receive a vote."

Sec. 8. G.S. 163-170(6) is amended by adding:

"c. In a multi-seat race, if the voter has marked the party circle at the top of the column of a political party and has marked the voting square of a candidate of any other party, only those candidates of any party beside whose names the voting squares are marked shall receive a vote."

Sec. 9. G.S. 163-140(b)(2) is amended in the second set of ballot instructions after the 36th line by deleting paragraph b., relettering paragraph c. as paragraph d., and inserting the following new paragraphs:

"b. You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party for whom you wish to vote.

c. You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

Sec. 10. G.S. 163-140(b)(3) is amended in the second set of ballot instructions after the 38th line by deleting paragraph b., relettering paragraph c. as paragraph d., and inserting the following new paragraphs:

"b. You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party for whom you wish to vote.

c. You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

Sec. 11. G.S. 163-140(b)(4) is amended by deleting paragraphs b. and c. and substituting the following

"b. You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party for whom you wish to vote. In any multi-seat race where a party circle is marked and you vote for candidates of another party, in order for your vote to count for any candidates for that office of the party for which you marked the party circle you must make a cross (X) mark opposite the name of those candidate(s)

c. You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

Sec. 12. G.S. 163-140(b)(5) is amended by deleting paragraphs b. and c. and substituting the following

"b. You may vote a split ticket by making a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party for whom you wish to vote. In any multi-seat race where a party circle is marked and you vote for candidates of another party, in order for your vote to count for any candidates for that office of the party for which you marked the party circle you must make a cross (X) mark opposite the name of those candidate(s)

c. You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

Sec. 13. The last sentence of G.S. 163-140(a) is rwritten to read: "Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot."

Sec. 14. G.S. 163-140(b)(4) is amended by adding the following at the end: "If the State ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot."

Sec. 15. G.S. 163-140(b)(5) is amended by adding the following at the end: "If the county ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot."

Sec. 16. Chapter 1099, Session Laws of 1983 is repealed.

Sec. 17. This act shall become effective with respect to elections held on or after September 1, 1987.

HECKMAN
BINDERY INC.
MAR 87